

contributions. If it is determined that such an error has occurred, the current agency must take any necessary steps to correct the error. The current agency may seek reimbursement from the former agency of any amount that would have been paid by the former agency had the error not occurred.

(11) Employee makeup contributions may be made only by payroll deduction from basic pay or, for uniformed services participants, from basic pay, incentive pay, or special pay, including bonus pay. Contributions by check, money order, cash, or other form of payment directly from the participant to the TSP, or from the participant to the employing agency for deposit to the TSP, are not permitted.

[68 FR 35498, June 13, 2003]

**§ 1605.12 Removal of erroneous contributions.**

(a) *Applicability.* This section applies to the removal of funds erroneously contributed to the TSP. The TSP calls this action a negative adjustment, and it is only available to remove erroneous contributions made on or after January 1, 2000. Erroneous contributions made before January 1, 2000, will remain in the participant's account. Excess contributions addressed by this section include, for example, excess employee contributions that result from employing agency error and excess employer contributions. This section does not address excess contributions resulting from a FERCCA correction; those contributions are addressed in § 1605.14.

(b) *Method of correction.* Negative adjustment records must be submitted by employing agencies in accordance with this part and with any other procedures provided by the Board.

(1) To remove money from a participant's account, the employing agency must submit, for each attributable pay date involved, a negative adjustment record stating the amount of the erroneous contribution being removed, the attributable pay date with respect to which the erroneous contribution was made, and the source(s) of the contributions.

(2) A negative adjustment record may be for all or a part of the contributions made for the attributable pay date and

source of contributions; however, for each source of contributions, the negative adjustment may not exceed the amount of contributions made for that date, less any prior negative adjustments for the same date.

(c) *Processing negative adjustments.* A negative adjustment will be allocated among investment funds in the same manner as the original contribution. The current value of the contributions that the agency seeks to remove by the negative adjustment will be calculated in accordance with the following rules:

(1) If the attributable pay date for the erroneous contribution is on or before the date TSP accounts were converted to shares (and on or after January 1, 2000), the TSP will:

(i) For each source of contributions, determine the dollar value of the amount to be removed from each investment fund, as of the last monthly valuation date before TSP accounts were converted to shares, by crediting the contribution with TSP investment fund returns;

(ii) For each source of contributions and each investment fund, convert the dollar value determined in paragraph (c)(1)(i) of this section to shares; and

(iii) Multiply the price per share for the date the adjustment is posted by the number of shares calculated in paragraph (c)(1)(ii) of this section.

(2) If the attributable pay date of the negative adjustment is after the date TSP accounts were converted to shares, the TSP will:

(i) For each source and type of contributions and for each investment fund, determine the number of shares that represent the amount of the contribution to be removed from the investment fund based upon the share price on the attributable pay date; and

(ii) Multiply the price per share on the date the adjustment is posted by the number of shares calculated in paragraph (c)(2)(i) of this section.

(d) *Employee contributions.* The following rules apply to negative adjustments involving employee contributions:

(1) If, on the posting date, the amount calculated under paragraph (c) of this section is greater than the

amount of the proposed negative adjustment, the full amount of the adjustment will be returned to the employing agency. Subject to paragraph (d)(4) of this section, the earnings on the erroneous contribution will remain in the participant's account;

(2) If, on the posting date, the amount calculated under paragraph (c) of this section is less than the amount of the proposed negative adjustment, the amount of the adjustment, reduced by the investment loss, will be returned to the employing agency. However, an investment loss will not affect the employing agency's obligation to refund to the participant the full amount of the erroneous contribution;

(3) If an employing agency removes erroneous employee contributions from a participant's account, it must also remove, under paragraph (e) of this section, any attributable agency matching contributions; and

(4) If all employee contributions are removed from a participant's account under the rules set forth in this section, the participant may choose to leave any earnings in the account unless he or she was not eligible to have an account in the TSP at the time earnings were credited to the account, and remains ineligible. If the participant was ineligible for a TSP account (and remains ineligible), the earnings will be paid to the participant. If earnings remain in the account, upon the participant's separation from Government service, they will be subject to the same withdrawal rules as apply to any other funds in a participant's account.

(e) *Employer contributions.* The following rules apply to negative adjustments involving erroneous employer contributions:

(1) Erroneous employer contributions will be returned to the employing agency only if the negative adjustment record is posted by the TSP record keeper within one year of the date the erroneous contribution was posted. If one year or more has elapsed when the negative adjustment record is posted, the amount computed under paragraph (c) of this section will be removed from the participant's account and used to offset TSP administrative expenses;

(2) If the erroneous contribution has been in the participant's account for less than one year when the negative adjustment record is posted and the amount computed under paragraph (c) of this section is greater than the amount of the adjustment, the employing agency will receive the full amount of the erroneous contribution. Any earnings attributable to the erroneous contribution will be removed from the participant's account and used to offset TSP administrative expenses;

(3) If the erroneous contribution has been in the participant's account for less than one year when the negative adjustment record is posted and the amount computed under paragraph (c) of this section is less than the amount of the adjustment, the employing agency will receive the amount of the erroneous contribution reduced by the investment loss; and

(4) An employing agency's obligation to submit negative adjustment records to remove erroneous contributions from a participant's account is not affected by the length of time the contributions have been in the account.

(f) *Each negative adjustment to be processed separately.* For purposes of paragraphs (d) and (e) of this section—

(1) If multiple negative adjustments for the same attributable pay date for a participant are posted on the same business day, the amount removed from the participant's account and used to offset TSP administrative expenses or returned to the employing agency will be determined separately for each adjustment. Earnings and losses for erroneous contributions made on different dates will not be netted against each other. In addition, for a negative adjustment for any attributable pay date, gains and losses from different sources of contributions or different investment funds will not be netted against each other. Instead, for each attributable pay date each source of contributions and each investment fund will be treated separately for purposes of these calculations;

(2) The amount computed by application of the rules in this section will be removed from the participant's account *pro rata* from all investment

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funds, by source, based on the allocation of the participant's most recent account balance; and

(3) If there is insufficient money in the same source of contributions to cover the amount to be removed, the negative adjustment record will be rejected.

[66 FR 44277, Aug. 22, 2001, as amended at 68 FR 35499, June 13, 2003; 68 FR 74451, Dec. 23, 2003]

### § 1605.13 Back pay awards and other retroactive pay adjustments.

(a) *Participant not employed.* The following rules apply to participants who receive a back pay award or other retroactive pay adjustment for a period during which the participant was separated from Government employment:

(1) If the participant is reinstated to Government employment, immediately upon reinstatement the employing agency must give the participant the opportunity to submit a contribution election to make current contributions. The contribution election will be effective as soon as administratively feasible, but no later than the first day of the first full pay period after it is received;

(2) The employing agency must give the participant the following options for electing makeup contributions:

(i) If the participant had a contribution election on file when he or she separated, upon the participant's reinstatement to Government employment, that election will be reinstated for purposes of the makeup contributions; or

(ii) Instead of making contributions for the period of separation in accordance with the reinstated contribution election, the participant may submit a new contribution election for any open season(s) that occurred during the period of separation;

(3) All makeup contributions under this paragraph (a) and associated breakage will be invested according to the participant's contribution allocation on the posting date. However, breakage will be calculated using the breakage rule described in § 1605.2 for the G Fund share prices and, if applicable, rates of return requested by the participant, unless the court or other tribunal with jurisdiction over the back pay case orders otherwise.

(b) *Participant employed.* The following rules apply to participants who receive a back pay award or other retroactive pay adjustment for a period during which the participant was not separated from Government employment:

(1) The participant will be entitled to make up contributions for the period covered by the back pay award or retroactive pay adjustment only if for that period—

(i) The participant had designated a percentage of basic pay to be contributed to the TSP; or

(ii) The participant had designated a dollar amount of contributions each pay period which equaled the applicable ceiling (FERS or CSRS) on contributions per pay period, and which, therefore, was limited as a result of the reduction in pay that is made up by the back pay award or other retroactive pay adjustment;

(2) The employing agency must compute the amount of additional employee contributions, agency matching contributions, and agency automatic (1%) contributions that would have been contributed to the participant's account had the reduction in pay leading to the back pay award or other retroactive pay adjustment not occurred; and

(3) All makeup contributions under this paragraph (b) and associated breakage will be posted to the participant's account based on the participant's contribution allocation on the posting date. Breakage will be calculated either of two ways:

(i) If the retroactive adjustment relates to an "as of" date on or after January 1, 2000, the TSP will use the participant's contribution allocation on the "as of" date; or

(ii) If the retroactive adjustment relates to an "as of" date before January 1, 2000, the rate of return will be either the G Fund rate or the average of the rates of return for all of the TSP investment funds, whichever rate is greater.

(c) *Contributions to be deducted before payment or other retroactive pay adjustment.* Employee makeup contributions required under paragraphs (a) and (b) of this section: